

Judicial Council of California Criminal Jury Instructions

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Judicial Council of California
Advisory Committee on Criminal Jury Instructions

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A. FORGERY

(i) Forging or Passing Document

1900. Forgery by False Signature (Pen. Code, § 470(a))

The defendant is charged [in Count _____] with forgery committed by signing a false signature [in violation of Penal Code section 470(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant signed (someone else's name/ [or] a false name) to [a/an] _____ <insert type[s] of document[s] from Pen. Code, § 470(d)>;
2. The defendant did not have authority to sign that name;
3. The defendant knew that (he/she) did not have that authority;

AND

4. When the defendant signed the document, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant forged the following documents: _____ <insert description of each document when multiple items alleged>. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant forged at least one of these documents and you all agree on which document (he/she) forged.]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of forgery by false signature, you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/

money order) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised August 2015, March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

If the prosecution also alleges that the defendant passed or attempted to pass the same document, give CALCRIM No. 1906, *Forging and Passing or Attempting to Pass: Two Theories in One Count*.

If the charged crime involves an instrument listed in Penal Code section 473(b), use the bracketed language beginning “If you find the defendant guilty . . .”

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

AUTHORITY

- Elements. Pen. Code, § 470(a).
- Signature Not Authorized—Element of Offense. *People v. Hidalgo* (1933) 128 Cal.App. 703, 707 [18 P.2d 391]; *People v. Maioli* (1933) 135 Cal.App. 205, 207 [26 P.2d 871].
- Intent to Defraud *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17

Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

- Required Additional Findings. Pen. Code, § 473(b).
- Scope of Pen. Code, §473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property §§ 165, 168–177.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1][a], [d][2][a] (Matthew Bender).

LESSER INCLUDED OFFENSES

Attempted Forgery Pen. Code, §§ 664, 470.

RELATED ISSUES

Documents Not Specifically Listed in Penal Code Section 470(d)

A document not specifically listed in Penal Code section 470(d) may still come within the scope of the forgery statute if the defendant “forges the . . . handwriting of another.” (Pen. Code, § 470(b).) “[A] writing not within those listed may fall under the part of section 470 covering a person who ‘counterfeits or forges the . . . handwriting of another’ if, on its face, the writing could possibly defraud anyone. [Citations.] The false writing must be something which will have the effect of defrauding one who acts upon it as genuine.” (*People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 741–742 [38 Cal.Rptr.2d 176].) The document must affect an identifiable legal, monetary, or property right. (*Id.* at p. 743; *Lewis v. Superior Court* (1990) 217 Cal.App.3d 379, 398–399 [265 Cal.Rptr. 855] [campaign letter with false signature of President Reagan could not be basis of forgery charge].) See CALCRIM No. 1902, *Forgery of Handwriting or Seal*.

Check Fraud

A defendant who forges the name of another on a check may be charged under either Penal Code section 470 or section 476, or both. (*People v. Hawkins* (1961) 196 Cal.App.2d 832, 838 [17 Cal.Rptr. 66]; *People v. Pearson* (1957) 151 Cal.App.2d 583, 586 [311 P.2d 927].) However, the defendant may not be convicted of and sentenced on both charges for the same conduct. (Pen. Code, § 654; *People v. Hawkins*, *supra*, 196 Cal.App.2d at pp. 839–840 [one count ordered dismissed]; see also CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited*.)

Credit Card Fraud

A defendant who forges the name of another on a credit card sales slip may be charged under either Penal Code section 470 or section 484f, or both. (*People v. Cobb* (1971) 15 Cal.App.3d 1, 4.) However, the defendant may not be convicted and sentenced on both charges for the same conduct. (Pen. Code, § 654; see also

CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited.*)

Return of Property

Two cases have held that the defendant may present evidence that he or she returned some or all of the property in an effort to demonstrate that he or she did not originally intend to defraud. (*People v. Katzman* (1968) 258 Cal.App.2d 777, 790 [66 Cal.Rptr. 319], disapproved on other grounds in *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 780 fn. 11 [200 Cal.Rptr. 916, 677 P.2d 1206]; *People v. Braver* (1964) 229 Cal.App.2d 303, 307–308 [40 Cal.Rptr. 142].) However, other cases have held, based on the particular facts of the cases, that such evidence was not admissible. (*People v. Parker* (1970) 11 Cal.App.3d 500, 510 [89 Cal.Rptr. 815] [evidence that the defendant made full restitution following arrest not relevant]; *People v. Wing* (1973) 32 Cal.App.3d 197, 202 [107 Cal.Rptr. 836] [evidence of restitution not relevant where defendant falsely signed the name of another to a check knowing he had no authority to do so].) If such evidence is presented, the court may give CALCRIM No. 1862, *Return of Property Not a Defense to Theft*. (*People v. Katzman*, *supra*, 258 Cal.App.2d at p. 791.) In addition, in *People v. Katzman*, *supra*, 258 Cal.App.2d at p. 792, the court held that, on request, the defense may be entitled to a pinpoint instruction that evidence of restitution may be relevant to determining if the defendant intended to defraud. If the court concludes that such an instruction is appropriate, the court may add the following language to the beginning of CALCRIM No. 1862, *Return of Property Not a Defense to Theft*:

If the defendant returned or offered to return [some or all of the] property obtained, that conduct may show (he/she) did not intend to defraud. If you conclude that the defendant returned or offered to return [some or all of the] property, it is up to you to decide the meaning and importance of that conduct.

Inducing Mentally Ill Person to Sign Document

In *People v. Looney* (2004) 125 Cal.App.4th 242, 248 [22 Cal.Rptr.3d 502], the court held that the defendants could not be prosecuted for forgery where the evidence showed that the defendants induced a mentally ill person to sign legal documents transferring property to them. The court concluded that, because the defendants had accurately represented the nature of the documents to the mentally ill person and had not altered the documents after he signed, they did not commit forgery. (*Ibid.*)

1901. Forgery by Endorsement (Pen. Code, § 470(a))

The defendant is charged [in Count _____] with forgery committed by endorsement [in violation of Penal Code section 470(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant signed (the back of a check/(a/an) _____ *<insert type of negotiable instrument>*) with (the name of the payee of that (check/ _____ *<insert type of negotiable instrument>*)/ [or] the name of another person whose signature was required to (cash that check/negotiate that instrument));
 2. The defendant did not have authority to sign that name;
 3. The defendant knew that (he/she) did not have that authority;
- AND
4. When the defendant signed the document, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant forged the following documents:
_____ *<insert description of each document when multiple items alleged>*.

You may not find the defendant guilty unless all of you agree that the People have proved that the defendant forged at least one of these documents and you all agree on which document (he/she) forged.]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of forgery by endorsement, you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

If the prosecution also alleges that the defendant passed or attempted to pass the same document, give CALCRIM No. 1906, *Forging and Passing or Attempting to Pass: Two Theories in One Count*.

AUTHORITY

- Elements. Pen. Code, § 470(a).
- Signature Not Authorized—Element of Offense. *People v. Hidalgo* (1933) 128 Cal.App. 703, 707 [18 P.2d 391]; *People v. Maioli* (1933) 135 Cal.App. 205, 207 [26 P.2d 871].
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Forgery by Endorsement. *People v. Maldonado* (1963) 221 Cal.App.2d 128, 133–134 [34 Cal.Rptr. 168]; *In re Valencia* (1927) 84 Cal.App. 26, 26 [259 P. 116].
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Required Additional Findings. Pen. Code, § 473(b).
- Scope of Pen. Code, § 473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against

Property, §§ 165, 168–177.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1][b], [c], [d] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery. Pen. Code, §§ 664, 470.

RELATED ISSUES

See the Related Issues section of the Bench Notes for CALCRIM No. 1900, *Forgery by False Signature*.

1902. Forgery of Handwriting or Seal (Pen. Code, § 470(b))

The defendant is charged [in Count _____] with forging [or counterfeiting] the (handwriting/seal) of another person [in violation of Penal Code section 470(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant forged [or counterfeited] the (handwriting/seal) of another person on _____ *<insert type[s] of document[s] that could defraud; see discussion in Related Issues>*;

AND

2. When the defendant did that act, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant forged [or counterfeited] the following documents: _____ *<insert description of each document when multiple items alleged>*. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant forged [or counterfeited] at least one of these documents and you all agree on which document (he/she) forged [or counterfeited].]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of forging [or counterfeiting] the (handwriting/seal) of another person, you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

If the prosecution also alleges that the defendant passed or attempted to pass the same document, give CALCRIM No. 1906, *Forging and Passing or Attempting to Pass: Two Theories in One Count*.

AUTHORITY

- Elements. Pen. Code, § 470(b).
- Applies to Document Not Listed in Penal Code Section 470(d). *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 741–742 [38 Cal.Rptr.2d 176].
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Required Additional Findings. Pen. Code, § 473(b).
- Scope of Pen. Code, § 473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 165, 168–177.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery. Pen. Code, §§ 664, 470.

RELATED ISSUES***Documents Not Specifically Listed in Penal Code Section 470(d)***

A document not specifically listed in Penal Code section 470(d) may still come within the scope of the statute if the defendant “forges the . . . handwriting of another.” (Pen. Code, 470(b).) However, not all writings are included within the scope of this provision. (*Lewis v. Superior Court* (1990) 217 Cal.App.3d 379, 398–399 [265 Cal.Rptr. 855] [campaign letter with false signature of President Reagan could not be basis of forgery charge].) “[A] writing not within those listed may fall under the part of section 470 covering a person who ‘counterfeits or forges the . . . handwriting of another’ if, on its face, the writing could possibly defraud anyone. [Citations.] The false writing must be something which will have the effect of defrauding one who acts upon it as genuine.” (*People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 741–742 [38 Cal.Rptr.2d 176].) The document must affect an identifiable legal, monetary, or property right. (*Id.* at p. 743; see also *Lewis v. Superior Court*, *supra*, 217 Cal.App.3d at pp. 398–399.)

1903. Forgery by Altering or Falsifying Will or Other Legal Document (Pen. Code, § 470(c))

The defendant is charged [in Count _____] with forgery committed by (altering[,]/ corrupting[,]/ [or] falsifying) a legal document [in violation of Penal Code section 470(c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (altered[,]/ corrupted[,]/ [or] falsified) a document;
2. That document was [a record of] (a/an) (will[,]/ codicil[,]/ conveyance[,]/ [or] court judgment[,]/ [or] officer's return to a court's process/ [or other] legal writing that the law accepts as evidence);

AND

3. When the defendant (altered[,]/ [or] corrupted[,]/ [or] falsified) the document, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[Someone *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

[The People allege that the defendant (altered[,]/ [or] corrupted[,]/ [or] falsified) the following documents: _____ *<insert description of each document when multiple items alleged>*. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (altered[,]/ [or] corrupted[,]/ [or] falsified) at least one of these documents and you all agree on which document (he/she) (altered[,]/ [or] corrupted[,]/ [or] falsified).]

New January 2006

BENCH NOTES***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

If the prosecution also alleges that the defendant passed or attempted to pass the same document, give CALCRIM No. 1906, *Forging and Passing or Attempting to Pass: Two Theories in One Count*.

If the prosecution alleges that the document was “corrupted,” the court may need to draft a definition of this term based on the evidence.

AUTHORITY

- Elements. Pen. Code, § 470(c).
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 148, 159–168.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery. Pen. Code, §§ 664, 470.

**1904. Forgery by Falsifying, Altering, or Counterfeiting Document
(Pen. Code, § 470(d))**

The defendant is charged [in Count _____] with forgery committed by (falsely making[,]/ [or] altering[,]/ [or] forging[,]/ [or] counterfeiting) a document [in violation of Penal Code section 470(d)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (falsely made[,]/ [or] altered[,]/ [or] forged[,]/ [or] counterfeited) (a/an) _____ <insert type[s] of document[s] from Pen. Code, § 470(d)>;

AND

2. When the defendant did that act, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[A person *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

[The People allege that the defendant (falsely made[,]/ [or] altered[,]/ [or] forged[,]/ [or] counterfeited) the following documents: _____ <insert description of each document when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (falsely made[,]/ [or] altered[,]/ [or] forged[,]/ [or] counterfeited) at least one of these documents and you all agree on which document (he/she) (falsely made[,]/ [or] altered[,]/ [or] forged[,]/ [or] counterfeited).]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of forgery by (falsifying[,]/[or] altering[,]/[or] counterfeiting), you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

If the prosecution also alleges that the defendant passed or attempted to pass the same document, give CALCRIM No. 1906, *Forging and Passing or Attempting to Pass: Two Theories in One Count*.

AUTHORITY

- Elements. Pen. Code, § 470(d).
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Required Additional Findings. Pen. Code, § 473(b).
- Scope of Pen. Code, § 473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against Property, §§ 165, 168–177.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143,

Crimes Against Property, § 143.04[1], [2] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery. Pen. Code, §§ 664, 470.

COMMENTARY

Penal Code section 470(d) provides that every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the items specified in subdivision (d), knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery. Penal Code section 470(d), as amended by Statutes 2005, ch. 295 (A.B. 361), became effective January 1, 2006. The amendment added “or falsifies the acknowledgment of any notary public or any notary public who issues an acknowledgment knowing it to be false” after the list of specified items. The committee believes that the added language has introduced ambiguities. The phrase “falsifies the acknowledgment of any notary public” seems to refer back to “person” at the beginning of subdivision (d), but it’s not clear whether this falsification must also be done with the intent to defraud in order to be forgery. If so, why was “acknowledgement of a notary public,” which is parallel in kind to the other documents and instruments listed in subdivision (d), not simply added to the list of items in subdivision (d)? With respect to the provisions regarding a notary public who issues an acknowledgment knowing it to be false, it could be that the Legislature intended the meaning to be that “[e]very person who . . . falsifies the acknowledgment of . . . any notary public who issues an acknowledgment knowing it to be false” is guilty of forgery. However, this interpretation makes the provision superfluous, as the amendment separately makes it forgery to falsify the acknowledgment of any notary public. Also, if a notary issues a false acknowledgment, it seems unlikely that it would be further falsified by a defendant who is not the notary, but who presumably sought and obtained the false acknowledgement. Alternatively, the Legislature could have intended to make a notary’s issuance of false acknowledgment an act of forgery on the part of the notary. The Legislative Counsel’s Digest of Assembly Bill 361 states that the bill makes it a “misdemeanor for a notary public to willfully fail to perform the required duties of a notary public” and makes “other related changes.” The bill amended a number of sections of the Civil Code and the Government Code as well as Penal Code section 470. The committee awaits clarification by the Legislature or the courts to enable judges to better interpret the newly-added provisions to Penal Code section 470(d).

**1905. Forgery by Passing or Attempting to Use Forged Document
(Pen. Code, § 470(d))**

The defendant is charged [in Count _____] with forgery committed by (passing[,]/ [or] using[,]/ [or] (attempting/ [or] offering) to use) a forged document [in violation of Penal Code section 470(d)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (passed[,]/ [or] used[,]/ [or] (attempted/ [or] offered) to use) [a/an] (false[,]/ [or] altered[,]/ [or] forged[,]/ [or] counterfeited) _____ <insert type[s] of document[s] from Pen. Code, § 470(d)>;
2. The defendant knew that the _____ <insert type[s] of document[s] from Pen. Code, § 470(d)> (was/were) (false[,]/ altered[,]/ [or] forged[,]/ [or] counterfeited);

AND

3. When the defendant (passed[,]/ [or] used[,]/ [or] (attempted/ [or] offered) to use) the _____ <insert type[s] of document[s] from Pen. Code, § 470(d)>, (he/she) intended that (it/they) be accepted as genuine and (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

A person (*passes*[,]/ [or] *uses*[,]/ [or] (*attempts*/ [or] *offers*) to use) a document if he or she represents to someone that the document is genuine. The representation may be made by words or conduct and may be either direct or indirect.

[A person *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

[The People allege that the defendant (passed[,]/ [or] used[,]/ [or] (attempted/ [or] offered) to use) the following documents: _____ <insert description of each document when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (passed[,]/ [or] used[,]/ [or] (attempted/

[or] offered) to use) at least one document that was (false[,]/ [or] altered[,]/ [or] forged[,]/ [or] counterfeited) and you all agree on which document (he/she) (passed[,]/ [or] used[,]/ [or] (attempted/ [or] offered) to use).]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of forgery by (passing[,]/[or] using[,]/ [or] attempting[,]/[or] offering to use) a forged document, you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant passed or attempted to use multiple forged documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term “utter” as to “use” or “attempt to use” an instrument. The committee has omitted the unfamiliar term “utter” in favor of the more familiar terms “use” and “attempt to use.”

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

If the prosecution also alleges that the defendant forged the same document, give CALCRIM No. 1906, *Forging and Passing or Attempting to Pass: Two Theories in One Count*.

AUTHORITY

- Elements. Pen. Code, § 470(d).

- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Pass or Attempt to Use Defined. *People v. Tomlinson* (1868) 35 Cal. 503, 509; *People v. Jackson* (1979) 92 Cal.App.3d 556, 561 [155 Cal.Rptr. 89], overruled on other grounds in *People v. Anderson* (1987) 43 Cal.3d 1104, 1122 [742 P.2d 1306].
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Required Additional Findings. Pen.Code, § 473(b).
- Scope of Pen. Code, § 473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 178.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

COMMENTARY

The committee was unable to locate any authority for what constitutes “offering to pass” a forged document. In *People v. Compton* (1899) 123 Cal. 403, 409–411 [56 P. 44], the court held that attempting to pass a forged document requires, at a minimum, that the defendant present the document to an innocent party, with an assertion that the document is genuine. (*Ibid.*; see also *People v. Fork* (1965) 233 Cal.App.2d 725, 730–731 [43 Cal.Rptr. 804] [discussing sufficiency of the evidence for attempting to pass].) In light of this holding, it is unclear if any act less than this would be sufficient for a conviction for “offering to pass.” The committee urges caution when considering whether to instruct the jury with the phrase “offering to pass.”

Penal Code section 470(d) provides that every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the items specified in subdivision (d), knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery. Penal Code section 470(d), as amended by Statutes 2005, ch. 295 (A.B. 361), became effective January 1, 2006. The amendment added “or falsifies the acknowledgment of any notary public or any notary public who issues an acknowledgment knowing it to be false” after the list of specified items. The committee believes that the added language has introduced ambiguities. The phrase “falsifies the acknowledgment of any notary public” seems to refer back to “person” at the beginning of subdivision (d), but it’s not clear whether this

falsification must also be done with the intent to defraud in order to be forgery. If so, why was “acknowledgement of a notary public,” which is parallel in kind to the other documents and instruments listed in subdivision (d), not simply added to the list of items in subdivision (d)? With respect to the provisions regarding a notary public who issues an acknowledgment knowing it to be false, it could be that the Legislature intended the meaning to be that “[e]very person who . . . falsifies the acknowledgment of . . . any notary public who issues an acknowledgment knowing it to be false” is guilty of forgery. However, this interpretation makes the provision superfluous, as the amendment separately makes it forgery to falsify the acknowledgment of any notary public. Also, if a notary issues a false acknowledgment, it seems unlikely that it would be further falsified by a defendant who is not the notary, but who presumably sought and obtained the false acknowledgement. Alternatively, the Legislature could have intended to make a notary’s issuance of false acknowledgment an act of forgery on the part of the notary. The Legislative Counsel’s Digest of Assembly Bill 361 states that the bill makes it a “misdemeanor for a notary public to willfully fail to perform the required duties of a notary public” and makes “other related changes.” The bill amended a number of sections of the Civil Code and the Government Code as well as Penal Code section 470. The committee awaits clarification by the Legislature or the courts to enable judges to better interpret the newly-added provisions to Penal Code section 470(d).

1906. Forging and Passing or Attempting to Pass: Two Theories in One Count

The defendant is charged [in Count _____] with forgery of [a/an] _____ <insert type[s] of document[s] from Pen. Code, § 470(d)>.

The defendant is being prosecuted for forgery under two theories: (1) that the defendant forged the document; and (2) that the defendant (passed[,]/ used[,]/ [or] (attempted/ [or] offered) to use) the forged document.

Each theory of forgery has different requirements, and I have instructed you on both.

You may not find the defendant guilty of forgery unless all of you agree that the People have proved that the defendant committed forgery under at least one theory. But all of you do not have to agree on the same theory.

New January 2006

BENCH NOTES

Instructional Duty

This instruction is to be given when the prosecution pursues the two theories of forgery of a single document in one count. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 618–619 [21 Cal.Rptr.2d 752].)

AUTHORITY

- Unanimity on Theory Not Required. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 618–619 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 169.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

1907–1919. Reserved for Future Use

(ii) Counterfeit Driver's License

1920. Falsifying, Altering, or Counterfeiting a Driver's License (Pen. Code, § 470a)

The defendant is charged [in Count _____] with (altering[,]/ [or] falsifying[,]/ [or] forging[,]/ [or] duplicating[,]/ [or] reproducing[,]/ [or] counterfeiting) a (driver's license/ [or] government-issued identification card) [in violation of Penal Code section 470a].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (altered[,]/ [or] falsified[,]/ [or] forged[,]/ [or] duplicated[,]/ [or] reproduced[,]/ [or] counterfeited) a (driver's license/ [or] government-issued identification card);

AND

2. When the defendant did that act, (he/she) intended that the (driver's license/ [or] identification card) be used to help commit forgery.

Someone *intends to commit forgery* if he or she intends to use a forged, counterfeit, altered, falsified, duplicated, or reproduced document to deceive another person in order to cause a loss of, or damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[A person *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant (altered[,]/ [or] falsified[,]/ [or] forged[,]/ [or] duplicated[,]/ [or] reproduced[,]/ [or] counterfeited) the following documents: _____ <insert description of each document when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (altered[,]/ [or] falsified[,]/ [or] forged[,]/ [or] duplicated[,]/ [or] reproduced[,]/ [or] counterfeited) at least one of these documents and you all agree on which document (he/she) (altered[,]/ [or] falsified[,]/ [or] forged[,]/ [or] duplicated[,]/ [or] reproduced[,]/ [or] counterfeited).]

BENCH NOTES***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 470a.
- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 155.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Possession of Altered Driver’s License. Veh. Code, § 14610.

**1921. Possessing or Displaying False, Altered, or Counterfeit
Driver's License (Pen. Code, § 470b)**

The defendant is charged [in Count _____] with (possessing[,]/ [or] displaying[,]/ [or] causing [or permitting] to be displayed) (an/a) (altered[,]/ [or] falsified[,]/ [or] forged[,]/ [or] duplicated[,]/ [or] reproduced[,]/ [or] counterfeited) (driver's license/ [or] government-issued identification card) [in violation of Penal Code section 470b].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (possessed[,]/ [or] displayed[,]/ [or] caused [or permitted] to be displayed) a (driver's license/ [or] government-issued identification card);
2. The (driver's license/ [or] government-issued identification card) was (altered[,]/ [or] falsified[,]/ [or] forged[,]/ [or] duplicated[,]/ [or] reproduced[,]/ [or] counterfeited);
3. The defendant knew that the (driver's license/ [or] government-issued identification card) had been (altered[,]/ [or] falsified[,]/ [or] forged[,]/ [or] duplicated[,]/ [or] reproduced[,]/ [or] counterfeited);

AND

4. When the defendant (possessed[,]/ [or] displayed[,]/ [or] caused [or permitted] to be displayed) the (driver's license/ [or] government-issued identification card), (he/she) intended that the document be used to commit forgery.

Someone *intends to commit forgery* if he or she intends to use a forged, counterfeit, altered, falsified, duplicated, or reproduced document to deceive another person in order to cause a loss of, or damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[A person *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to

control it), either personally or through another person.]

[The People allege that the defendant (possessed[,]/ [or] displayed[,]/ [or] caused [or permitted] to be displayed) the following documents:

_____ <insert description of each documents when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (possessed[,]/ [or] displayed[,]/ [or] caused [or permitted] to be displayed) at least one of these documents and you all agree on which document (he/she) (possessed[,]/ [or] displayed[,]/ [or] caused [or permitted] to be displayed).]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 470b.
- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Property, § 155.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143,

Crimes Against Property, § 143.04[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Possession of Altered Driver's License. Veh. Code, § 14610.

1922–1924. Reserved for Future Use

(iii) Counterfeit Seal

1925. Forgery of Government, Public, or Corporate Seal (Pen. Code, § 472)

The defendant is charged [in Count _____] with (forging/ [or] counterfeiting) a (government/public/corporate) seal [or (falsely making[,]/ [or] forging[,]/ [or] counterfeiting) an impression representing a seal] [in violation of Penal Code section 472].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (forged/ [or] counterfeited) a seal [or (falsely made[,]/ [or] forged[,]/ [or] counterfeited) an impression representing a seal] of (this state[,]/ [or] a legally authorized public officer[,]/ [or] a court of record[,]/ [or] a corporation[,]/ [or] a public seal legally authorized or recognized by any state, government, or country);

AND

2. When the defendant did that act, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant (forged[,]/ [or] counterfeited[,]/ [or] falsely made) the following items: _____ *<insert description of each seal or impression when multiple items alleged>*. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (forged[,]/ [or] counterfeited[,]/ [or] falsely made) at least one of these items and you all agree on which item (he/she) (forged[,]/ [or] counterfeited[,]/ [or] falsely made).]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 472.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 155.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery of Seal. Pen. Code, §§ 664, 472.

**1926. Possession of Counterfeit Government, Public, or
Corporate Seal (Pen. Code, § 472)**

The defendant is charged [in Count _____] with possessing a counterfeit (government/public/corporate) seal [or an impression of a counterfeit (government/public/corporate) seal] [in violation of Penal Code section 472].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant possessed a counterfeit seal [or an impression of a counterfeit seal] of (this state[,]/ [or] a legally authorized public officer[,]/ [or] a court of record[,]/ [or] a corporation[,]/ [or] a public seal legally authorized or recognized by any state, government, or country);
2. The defendant knew that the seal [or impression of the seal] was counterfeit;
3. The defendant willfully concealed the fact that the seal [or impression of the seal] was counterfeit;

AND

4. When the defendant possessed the seal [or impression of the seal], (he/she) intended to defraud.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[The People allege that the defendant possessed the following items:
_____ <insert description of each seal or impression when multiple items alleged>. You may not find the defendant guilty unless you all

agree that the People have proved that the defendant possessed at least one of these items and you all agree on which item (he/she) possessed.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple forged items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 472.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 155.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Possession of Counterfeit Seal. Pen. Code, §§ 664, 472.

1927–1929. Reserved for Future Use

(iv) Possession With Intent to Defraud

1930. Possession of Forged Document (Pen. Code, § 475(a))

The defendant is charged [in Count _____] with (possessing/ [or] receiving) (a/an) (forged[,]/ [or] altered[,]/ [or] counterfeit) document [in violation of Penal Code section 475(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (possessed/ [or] received) (a/an) (forged[,]/ [or] altered[,]/ [or] counterfeit) _____ *<insert type[s] of document[s] from Pen. Code, § 470(d)>*;
2. The defendant knew that the document was (forged[,]/ [or] altered[,]/ [or] counterfeit);
3. The defendant intended to (pass[,]/ [or] use[,]/ [or] aid the passage or use of) the document as genuine;

AND

4. When the defendant (possessed/ [or] received) the document, (he/ she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

A person (*passes/ [or] uses*) a document if he or she represents to someone that the document is genuine. The representation may be made by words or conduct and may be either direct or indirect.

[A person *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

[The People allege that the defendant possessed the following documents: _____ *<insert description of each document when multiple items alleged>*. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these documents and you all agree on which document (he/ she) possessed.]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of (possessing/ [or] receiving) (a/an) (forged[,]/ [or] altered[,]/[or] counterfeit) document, you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple forged items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term “utter” as to “use” or “attempt to use” an instrument. The committee has omitted the unfamiliar term “utter” in favor of the more familiar terms “use” and “attempt to use.”

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 475(a).
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Pass or Attempt to Use Defined. *People v. Tomlinson* (1868) 35 Cal. 503, 509; *People v. Jackson* (1979) 92 Cal.App.3d 556, 562 [155 Cal.Rptr. 89], disapproved on other grounds in *People v. Anderson* (1987) 43 Cal.3d 1104, 1123 [240 Cal.Rptr. 585, 742 P.2d 1306].

- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Required Additional Findings. Pen. Code, § 473(b).
- Scope of Pen. Code, § 473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 192.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

RELATED ISSUES***Possession and Uttering***

The defendant cannot be convicted of possessing and uttering the same document. (*People v. Reisdorff* (1971) 17 Cal.App.3d 675, 679 [95 Cal.Rptr. 224].)

Possession of Multiple Documents Only One Offense

Even if the defendant possessed multiple forged documents at the same time, only one violation of Penal Code section 475 may be charged. (*People v. Bowie* (1977) 72 Cal.App.3d 143, 156–157 [140 Cal.Rptr. 49] [11 checks supported 1 count, not 11].)

**1931. Possession of Blank Check: With Intent to Defraud (Pen.
Code, § 475(b))**

The defendant is charged [in Count _____] with possessing a (blank/ [or] unfinished) (check[,]/ [or] note[,]/ [or] money order[,]/ [or] traveler's check[,]/ [or] bank bill) with intent to defraud [in violation of Penal Code section 475(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant possessed a (blank/ [or] unfinished) (check[,]/ [or] note[,]/ [or] money order[,]/ [or] traveler's check[,]/ [or] bank bill);

AND

2. When the defendant possessed the document, (he/she) intended to complete [or aid the completion of] the document in order to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The (check[,]/ [or] note[,]/ [or] money order[,]/ [or] traveler's check[,]/ [or] bank bill) may be real or fictitious.]

[The People allege that the defendant possessed the following documents: _____ *<insert description of each document when multiple items alleged>*. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these documents and you all agree on which document (he/ she) possessed.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 475(b).
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 173.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

RELATED ISSUES

See the Related Issues section to CALCRIM No. 1930, *Possession of Forged Document*.

**1932. Possession of Completed Check: With Intent to Defraud
(Pen. Code, § 475(c))**

The defendant is charged [in Count _____] with possessing a completed (check[,]/ [or] money order[,]/ [or] traveler's check[,]/ [or] warrant or county order) with intent to defraud [in violation of Penal Code section 475(c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant possessed a completed (check[,]/ [or] money order[,]/ [or] traveler's check[,]/ [or] warrant or county order);

AND

2. When the defendant possessed the document, (he/she) intended to (pass[,]/ [or] use[,]/ [or] aid the passage or use of) the document in order to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

A person (*passes/* [or] *uses*) a document if he or she represents to someone that the document is genuine. The representation may be made by words or conduct and may be either direct or indirect.

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The (check[,]/ [or] money order[,]/ [or] traveler's check[,]/ [or] warrant or county order) may be real or false.]

[The People allege that the defendant possessed the following documents: _____ *<insert description of each document when multiple items alleged>*. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these documents and you all agree on which document (he/she) possessed.]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of possessing a completed (check[,]/ [or] money order[,]/ [or] traveler's check) with intent to defraud, you must then decide whether the value of the _____ (check[,]/ [or]

money order[,]/ [or] traveler's check) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check[,]/ [or] money order[,]/ [or] traveler's check) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term “utter” as to “use” or “attempt to use” an instrument. The committee has omitted the unfamiliar term “utter” in favor of the more familiar terms “use” and “attempt to use.”

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 475(c).
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Required Additional Findings. Pen. Code, § 473(b).
- Scope of Pen. Code, § 473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against

Property, § 192.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

RELATED ISSUES

See the Related Issues section to CALCRIM No. 1930, *Possession of Forged Document*.

1933–1934. Reserved for Future Use

(v) Check Fraud

1935. Making, Passing, etc., Fictitious Check or Bill (Pen. Code, § 476)

The defendant is charged [in Count _____] with (possessing[,]/ [or] making[,]/ [or] passing[,]/ [or] using[,]/ [or] attempting to pass or use) (a/an) (false/ [or] altered) (check[,]/ [or] bill[,]/ [or] note[,]/ [or other] legal writing for the payment of money or property) [in violation of Penal Code section 476].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (possessed[,]/ [or] made[,]/ [or] passed[,]/ [or] used[,]/ [or] attempted to pass or use) (a/an) (false/ [or] altered) (check[,]/ [or] bill[,]/ [or] note[,]/ [or other] legal writing for the payment of money or property);
 2. The defendant knew that the document was (false/ [or] altered);
- [AND]
3. When the defendant (possessed[,]/ [or] made[,]/ [or] passed[,]/ [or] used[,]/ [or] attempted to pass or use) the document, (he/she) intended to defraud(;/.)

<Give element 4 only when possession charged.>

[AND]

4. When the defendant possessed the document, (he/she) intended to pass or use the document as genuine.]

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[A person *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

A person (*passes*[,]/ [or] *uses*[,]/ [or] *attempts to pass or use*) a document if he or she represents to someone that the document is genuine. The representation may be made by words or conduct and may be either direct or indirect.

[The People allege that the defendant (possessed[,]/ [or] made[,]/ [or] passed[,]/ [or] used[,]/ [or] attempted to pass or use) the following documents: _____ *<insert description of each document when multiple items alleged>*. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (possessed[,]/ [or] made[,]/ [or] passed[,]/ [or] used[,]/ [or] attempted to pass or use) at least one document that was (fictitious/ [or] altered) and you all agree on which document (he/she) (possessed[,]/ [or] made[,]/ [or] passed[,]/ [or] used[,]/ [or] attempted to pass or use).]

<Sentencing factor for instruments specified in Penal Code section 473(b)>

[If you find the defendant guilty of (possessing[,]/[or] making[,]/ [or] passing [,]/ [or] using[,]/ [or] attempting to pass or use) a fictitious (check/bill/note/legal writing), you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than \$950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised April 2011, March 2019

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant passed or possessed multiple forged documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term “utter” as to “use” or “attempt to use” an instrument. The committee has omitted the unfamiliar term “utter” in favor of the more familiar terms “use” and “attempt to use.”

If the prosecution alleges that the defendant possessed the document, give element 4. Do not give element 4 if the prosecution alleges that the defendant made, passed, used, or attempted to pass or use the document.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence

shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 476.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Pass or Attempt to Use Defined. *People v. Tomlinson* (1868) 35 Cal. 503, 509; *People v. Jackson* (1979) 92 Cal.App.3d 556, 561 [155 Cal.Rptr. 89], overruled on other grounds in *People v. Anderson* (1987) 43 Cal.3d 1104, 1122 [240 Cal.Rptr. 585, 742 P.2d 1306].
- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Explanation of “Fictitious.” *People v. Mathers* (2010) 183 Cal.App.4th 1464, 1467–1468 [108 Cal.Rptr.3d 720].
- Required Additional Findings. Pen. Code, § 473(b).
- Scope of Pen. Code, § 473(b). *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 195, 178, 192.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Making, etc., of Fictitious Check. Pen. Code, §§ 664, 476.

RELATED ISSUES

Check Fraud

A defendant who forges the name of another on a check may be charged under either Penal Code section 470 or section 476. (*People v. Hawkins* (1961) 196 Cal.App.2d 832, 838 [17 Cal.Rptr. 66]; *People v. Pearson* (1957) 151 Cal.App.2d 583, 586 [311 P.2d 927].) However, the defendant may not be convicted of and sentenced on both charges for the same conduct. (Pen. Code, § 654; *People v. Hawkins, supra*, 196 Cal.App.2d at pp. 839–840; see also CALCRIM No. 3516, *Multiple Counts—Alternative Charges for One Event—Dual Conviction Prohibited*.)

1936–1944. Reserved for Future Use

(vi) Filing False Document

1945. Procuring Filing of False Document or Offering False Document for Filing (Pen. Code, § 115)

The defendant is charged [in Count _____] with (offering a (false/ [or] forged) document for (filing[,]/ [or] recording[,]/ [or] registration)/having a (false/ [or] forged) document (filed[,]/ [or] recorded[,]/ [or] registered)) [in violation of Penal Code section 115].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—offering>

1. The defendant offered a (false/ [or] forged) document for (filing[,]/ [or] recording[,]/ [or] registration) in a public office in California;

<Alternative 1B—procuring>

1. The defendant caused a (false/ [or] forged) document to be (filed[,]/ [or] recorded[,]/ [or] registered) in a public office in California;
2. When the defendant did that act, (he/she) knew that the document was (false/ [or] forged);

AND

3. The document was one that, if genuine, could be legally (filed[,]/ [or] recorded[,]/ [or] registered).

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

AUTHORITY

- Elements. Pen. Code, § 115.
- Materiality of Alteration Not Element. *People v. Feinberg* (1997) 51 Cal.App.4th 1566, 1578–1579 [60 Cal.Rptr.2d 323].
- Meaning of Instrument as Used in Penal Code section 115. *People v. Parks* (1992) 7 Cal.App.4th 883, 886–887 [9 Cal.Rptr.2d 450]; *Generes v. Justice Court* (1980) 106 Cal.App.3d 678, 682–684 [165 Cal.Rptr. 222]; *People v.*

Powers (2004) 117 Cal.App.4th 291, 295–297 [11 Cal.Rptr.3d 619].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 171–172.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1][b] (Matthew Bender).

RELATED ISSUES

Meaning of Instrument

Penal Code section 115 applies to any “instrument” that, “if genuine, might be filed, registered, or recorded under any law of this state or of the United States” (Pen. Code, § 115(a).) Modern cases have interpreted the term “instrument” expansively, including any type of document that is filed or recorded with a public agency that, if acted on as genuine, would have the effect of deceiving someone. (See *People v. Parks* (1992) 7 Cal.App.4th 883, 886–887 [9 Cal.Rptr.2d 450]; *Generes v. Justice Court* (1980) 106 Cal.App.3d 678, 682–684 [165 Cal.Rptr. 222].) Thus, the courts have held that “instrument” includes a modified restraining order (*People v. Parks, supra*, 7 Cal.App.4th at p. 886), false bail bonds (*People v. Garcia* (1990) 224 Cal.App.3d 297, 306–307 [273 Cal.Rptr. 666]), and falsified probation work referrals (*People v. Tate* (1997) 55 Cal.App.4th 663, 667 [64 Cal.Rptr.2d 206]). In the recent case of *People v. Powers* (2004) 117 Cal.App.4th 291, 297 [11 Cal.Rptr.3d 619], the court held that fishing records were “instruments” under Penal Code section 115. The court stated that “California courts have shown reluctance to interpret section 115 so broadly that it encompasses any writing that may be filed in a public office.” (*Id.* at p. 295.) The court adopted the following analysis for whether a document is an “instrument,” quoting the Washington Supreme Court:

(1) the claimed falsity relates to a material fact represented in the instrument; and (2a) the information contained in the document is of such a nature that the government is required or permitted by law, statute or valid regulation to act in reliance thereon; or (2b) the information contained in the document materially affects significant rights or duties of third persons, when this effect is reasonably contemplated by the express or implied intent of the statute or valid regulation which requires the filing, registration, or recording of the document.

(*Id.* at p. 297 [quoting *State v. Price* (1980) 94 Wash.2d 810, 819 [620 P.2d 994].)

Each Document Constitutes a Separate Offense

Penal Code section 115 provides that each fraudulent instrument filed or offered for filing constitutes a separate violation (subdivision (b)) and may be punished separately (subdivision (d)). “Thus, the Legislature has unmistakably authorized the imposition of separate penalties for each prohibited act even though they may be

part of a continuous course of conduct and have the same objective.” (*People v. Gangemi* (1993) 13 Cal.App.4th 1790, 1800 [17 Cal.Rptr.2d 462].)

1946–1949. Reserved for Future Use

B. ACCESS CARD FRAUD

1950. Sale or Transfer of Access Card or Account Number (Pen. Code, § 484e(a))

The defendant is charged [in Count _____] with (selling[,]/ [or] transferring[,]/ [or] conveying) an access card [in violation of Penal Code section 484e(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) an access card;
2. The defendant did so without the consent of the cardholder or the issuer of the card;

AND

3. When the defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) the access card, (he/she) intended to defraud.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

[*Selling* means exchanging something for money, services, or anything of value.]

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) the following access cards: _____ <insert description of each card when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (sold[,]/ [or] transferred[,]/ [or] conveyed) at least one of these cards and you all agree on which card (he/she) (sold[,]/ [or] transferred[,]/ [or] conveyed).]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant sold or transferred multiple cards, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 484e(a).
- Definitions. Pen. Code, § 484d.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 190–191.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

LESSER INCLUDED OFFENSES

Possession of Access Card With Intent to Sell (Pen. Code, § 484e(c)) may be a lesser included offense. (But see *People v. Butler* (1996) 43 Cal.App.4th 1224, 1245–1246 [51 Cal.Rptr.2d 150].)

RELATED ISSUES***Multiple Charges Based on Single Act***

Prosecution under Penal Code section 484d et seq. does not preclude simultaneous prosecution under other statutes for the same conduct. (*People v. Braz* (1997) 57 Cal.App.4th 1, 8 [66 Cal.Rptr.2d 553]; *People v. Butler* (1996) 43 Cal.App.4th 1224, 1243–1244 [51 Cal.Rptr.2d 150].) Thus, the defendant may also be charged with such offenses as burglary (Pen. Code, § 459), forgery (Pen. Code, § 470), grand theft (Pen. Code, § 487), or telephone fraud (Pen. Code, § 502.7). (*People v. Braz*, *supra*, 57 Cal.App.4th at p. 8; *People v. Butler*, *supra*, 43 Cal.App.4th at pp. 1243–1244.) However, Penal Code section 654 may preclude punishment for multiple offenses. (*People v. Butler*, *supra*, 43 Cal.App.4th at p. 1248.)

Cloned Cellular Phone

“[T]he Legislature intended that the definition of access card be broad enough to cover future technologies, the only limitation being on purely paper transactions. As the evidence disclosed here, a cloned cellular phone is a sophisticated and unlawful ‘means of account access’ to the account of a legitimate telephone subscriber.” (*People v. Butler* (1996) 43 Cal.App.4th 1224, 1244 [51 Cal.Rptr.2d 150].)

**1951. Acquiring or Retaining an Access Card or Account Number
(Pen. Code, § 484e(c))**

The defendant is charged [in Count _____] with unlawfully (acquiring/ [or] retaining) an access card [in violation of Penal Code section 484e(c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (acquired/ [or] retained) an access card;
2. The defendant did so without the consent of the cardholder or the issuer of the card;

AND

3. When the defendant (acquired/ [or] retained) the access card, (he/she) intended to defraud by (using it[,]/ [or] selling or transferring it to someone other than the cardholder or issuer).

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

[*Selling* means exchanging something for money, services, or anything of value.]

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant (acquired/ [or] retained) the

following access cards: _____ *<insert description of each card when multiple items alleged>.* **You may not find the defendant guilty unless you all agree that the People have proved that the defendant (acquired/ [or] retained) at least one of these cards and you all agree on which card (he/she) (acquired/ [or] retained).]**

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant acquired or retained multiple cards, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 484e(c).
- Definitions. Pen. Code, § 484d.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 190–191.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

**1952. Acquiring or Retaining Account Information (Pen. Code,
§ 484e(d))**

The defendant is charged [in Count _____] with (acquiring/ [or] retaining) the account information of an access card [in violation of Penal Code section 484e(d)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (acquired/ [or] retained) the account information of an access card that was validly issued to someone else;
2. The defendant did so without the consent of the cardholder or the issuer of the card;

AND

3. When the defendant (acquired/ [or] retained) the account information, (he/she) intended to use that information fraudulently.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant (acquired/ [or] retained) the account information of the following access cards: _____ <insert

description of each card when multiple items alleged>. **You may not find the defendant guilty unless you all agree that the People have proved that the defendant (acquired/ [or] retained) the account information of at least one of these cards and you all agree on which card's account information (he/she) (acquired/ [or] retained).]**

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed the account information of multiple cards, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 484e(d).
- Definitions. Pen. Code, § 484d.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 190–191.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

RELATED ISSUES***Acquires***

“If appellant is arguing that only the person who *first* acquires this information with the requisite intent is guilty of the crime, we disagree. We interpret the crime to apply to any person who acquires that information with the intent to use it fraudulently.” (*People v. Smith* (1998) 64 Cal.App.4th 1458, 1470 [76 Cal.Rptr.2d 75].)

Includes Possession of Cancelled Card

In *People v. Molina* (2004) 120 Cal.App.4th 507, 511 [15 Cal.Rptr.3d 493], the defendant possessed a cancelled access card that had been issued to someone else. The court held that this constituted a violation of Penal Code section 484e(d). (*Id.* at pp. 514–515.) The court further held that, although the defendant’s conduct also violated Penal Code section 484e(c), a misdemeanor, the defendant’s right to equal protection was not violated by being prosecuted for the felony offense. (*Id.* at pp. 517–518.)

**1953. Making Counterfeit Access Card or Account Number (Pen.
Code, § 484f(a))**

The defendant is charged [in Count _____] with (designing[,]/ [or] making[,]/ [or] altering[,]/ [or] embossing) a counterfeit access card [in violation of Penal Code section 484f(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (designed[,]/ [or] made[,]/ [or] altered[,]/ [or] embossed) a counterfeit access card;

AND

2. When the defendant did that act, (he/she) intended to defraud.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *counterfeit access card* is a counterfeit, fictitious, altered, or forged access card or a false representation or depiction of an access card or any part of such a card.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[A person *alters* an access card if he or she adds to, erases, or changes a part of the card that affects a legal, financial, or property right.]

[The People allege that the defendant (designed[,]/ [or] made[,]/ [or] altered[,]/ [or] embossed) the following counterfeit access cards:

_____ <insert description of each card when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (designed[,]/ [or] made[,]/ [or] altered[,]/ [or] embossed) at least one of these cards and

you all agree on which card (he/she) (designed[,]/ [or] made[,]/ [or] altered[,]/ [or] embossed).]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant made multiple cards, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 484f(a).
- Definitions. Pen. Code, § 484d.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against

Property, § 192.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery of Access Card. Pen. Code, §§ 664, 484f.

RELATED ISSUES

See the Related Issues sections in CALCRIM No. 1900, *Forgery by False Signature*, and CALCRIM No. 1950, *Sale or Transfer of Access Card or Account Number*.

**1954. Using or Attempting to Use Counterfeit Access Card (Pen.
Code, § 484f(a))**

The defendant is charged [in Count _____] with (using/ [or] attempting to use) a counterfeit access card [in violation of Penal Code section 484f(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (used/ [or] attempted to use) a counterfeit access card;

AND

2. When the defendant did that act, (he/she) intended to defraud.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *counterfeit access card* is a counterfeit, fictitious, altered, or forged access card or a false representation or depiction of an access card or any part of such a card.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/an unincorporated business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

A person *alters* an access card if he or she adds to, erases, or changes a part of the card that affects a legal, financial, or property right.

A person (*uses/ [or] attempts to use*) a counterfeit access card if he or she represents to someone that the card is genuine. The representation may be made by words or conduct and may be either direct or indirect.

[The People allege that the defendant (used/ [or] attempted to use) the

following counterfeit access cards: _____ <insert description of each card when multiple items alleged>. **You may not find the defendant guilty unless you all agree that the People have proved that the defendant (used/ [or] attempted to use) at least one of these cards and you all agree on which card (he/she) (used/ [or] attempted to use).]**

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant used multiple cards, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term “utter” as to “use” or “attempt to use” an instrument. The committee has omitted the unfamiliar term “utter” in favor of the more familiar terms “use” and “attempt to use.”

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 484f(a).
- Definitions. Pen. Code, § 484d.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

- Alteration Defined. *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Pass or Attempt to Use Defined. *People v. Tomlinson* (1868) 35 Cal. 503, 509; *People v. Jackson* (1979) 92 Cal.App.3d 556, 561 [155 Cal.Rptr. 89], overruled on other grounds in *People v. Anderson* (1987) 43 Cal.3d 1104, 1122 [240 Cal.Rptr. 585, 742 P.2d 1306].
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 192.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, §§ 143.01[2][c], 143.04[1], [2] (Matthew Bender).

RELATED ISSUES

See the Related Issues sections in CALCRIM No. 1900, *Forgery by False Signature*, and CALCRIM No. 1950, *Sale or Transfer of Access Card or Account Number*.

**1955. False Signature on Access Card or Receipt (Pen. Code,
§ 484f(b))**

The defendant is charged [in Count _____] with forgery committed by signing a false signature on (an access card/ [or] a document authorizing payment by an access card) [in violation of Penal Code section 484f(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant signed (someone else's name/ [or] a false name) on [an access card] [or] [a (sales slip[,]/ [or] sales draft[,]/ [or] document for the payment of money) to complete an access card transaction];
2. The defendant was not the cardholder and did not have the authority of the cardholder to sign that name;
3. The defendant knew that (he/she) did not have authority to sign that name;

AND

4. When the defendant signed the name, (he/she) intended to defraud.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

**[The People allege that the defendant forged the following (access cards/ [or] documents authorizing payment by an access card): _____
 <insert description of each item when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant forged at least one of these (cards/documents) and you all agree on which (card/document) (he/she) forged.]**

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple cards or transactions, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

In the definition of "access card," the court may give the bracketed portion that begins with "other than a transfer" at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating "(A/An) _____ is an access card" if the parties agree on that point.

Give the bracketed sentence that begins with "For the purpose of this instruction" if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with "It is not necessary" if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 484f(b).
- Definitions. Pen. Code, § 484d.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

CALCRIM No. 1955

CRIMINAL WRITINGS AND FRAUD

- Signature Not Authorized—Element of Offense. *People v. Hidalgo* (1933) 128 Cal.App. 703, 707 [18 P.2d 391]; *People v. Maioli* (1933) 135 Cal.App. 205, 207 [26 P.2d 871].
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 192.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1], [2] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery of Access Card. Pen. Code, §§ 664, 484f.

RELATED ISSUES

See the Related Issues sections in CALCRIM No. 1900, *Forgery by False Signature*, and CALCRIM No. 1950, *Sale or Transfer of Access Card or Account Number*.

1956. Use of Forged, etc., Access Card (Pen. Code, § 484g(a))

The defendant is charged [in Count _____] with using (an access card/ [or] account information for an access card) that had [been] (altered[,]/ [or] forged[,]/ [or] expired[,]/ [or] revoked[,]/ [or] acquired or retained without permission of the cardholder or card issuer[,]/ [or] _____ *<insert other description of card obtained or retained in violation of Pen. Code, §§ 484e or 484f>*) [in violation of Penal Code section 484g(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant used (an access card/ [or] account information for an access card) that had [been] (altered[,]/ [or] forged[,]/ [or] expired[,]/ [or] revoked[,]/ [or] acquired or retained without permission of the cardholder or card issuer[,]/ [or] _____ *<insert other description of card obtained or retained in violation of Pen. Code, §§ 484e or 484f>*);
 2. The defendant knew that the (access card/ [or] account information) had [been] (altered[,]/ [or] forged[,]/ [or] expired[,]/ [or] revoked[,]/ [or] acquired or retained without permission of the cardholder or card issuer[,]/ [or] _____ *<insert other description of card obtained or retained in violation of Pen. Code, §§ 484e or 484f>*);
 3. When the defendant used the (card/ [or] information), (he/she) intended to obtain money, goods, services, or anything of value;
- AND
4. When the defendant used the (card/ [or] information), (he/she) intended to defraud.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ *<insert description, e.g., ATM card, credit card>* is an access card.]

[An *expired access card* is one that shows on its face an expiration date that has passed.]

[A *revoked access card* is one that the card issuer no longer authorizes for use by the cardholder who has been given written notice of the revocation.]

[A *cardholder* is anyone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].]

[A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.]

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[A person *alters* an access card if he or she adds to, erases, or changes a part of the card that affects a legal, financial, or property right.]

[The People allege that the defendant used the following (access cards/ [or] access card account information): _____ <insert description of each card when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant used at least one of these (cards/ [or] card's account information) and you all agree on which (card/ [or] card account information) (he/she) used.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple cards or transactions, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

If the prosecution alleges that the card was “obtained or retained in violation of Penal Code section 484e or 484f,” the court may use the phrase “acquired or retained without permission of the cardholder or card issuer,” if appropriate based on the facts. (See Pen. Code, § 484e(d).) Alternatively, the court may insert an appropriate description of a card “obtained or retained in violation of Penal Code section 484e or 484f” where indicated. If the court inserts another description, the

court should also give the jury an instruction explaining when a card is “obtained or retained” in violation of the applicable section, defining any necessary terms.

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

AUTHORITY

- Elements. Pen. Code, § 484g(a).
- Definitions. Pen. Code, § 484d.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Alteration Defined. *People v. Neseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Items. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 193.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, §§ 143.01[2][c], 143.04[1], [2] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Use of Access Card. Pen. Code, §§ 664, 484g.

RELATED ISSUES

Revoked Access Card

To prove that the defendant used a “revoked” access card, the prosecution must prove that written notice of the revocation was sent to the cardholder. (*People v. Whight* (1995) 36 Cal.App.4th 1143, 1150 [43 Cal.Rptr.2d 163].)

CALCRIM No. 1956**CRIMINAL WRITINGS AND FRAUD**

See the Related Issues sections in CALCRIM No. 1900, *Forgery by False Signature*, and CALCRIM No. 1950, *Sale or Transfer of Access Card or Account Number*.

**1957. Obtaining Money, etc., by Representing Self as Holder of
Access Card (Pen. Code, § 484g(b))**

The defendant is charged [in Count _____] with obtaining something of value by fraudulently representing (himself/herself) as the holder of an access card [in violation of Penal Code section 484g(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant obtained (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) by representing that (he/she) was the holder of an access card;
2. The access card had not, in fact, been issued;
3. The defendant obtained (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) without the consent of the cardholder;

AND

4. When the defendant obtained (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), (he/she) intended to defraud.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer

a financial, legal, or property loss as a result of the defendant's acts.]

[If you find the defendant guilty of obtaining money by access card, you must then decide whether the value of the (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) obtained in any six-month period was more than \$950. If you have a reasonable doubt whether the value of the (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) was more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised August 2015

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

AUTHORITY

- Elements Pen. Code, § 484g(b).
- Definitions Pen. Code, § 484d.
- Intent to Defraud *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity Pen. Code, § 8.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against

Property § 218.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[2][c] (Matthew Bender).

COMMENTARY

The committee has written this instruction based on the language of the statute, Penal Code section 484g(b). However, the committee notes that the requirements of the statute appear to be internally inconsistent.

LESSER INCLUDED OFFENSES

- Attempted Use of Access Card Pen. Code, §§ 664, 484g.

RELATED ISSUES

See the Related Issues sections in CALCRIM No. 1900, *Forgery by False Signature*, and CALCRIM No. 1950, *Sale or Transfer of Access Card or Account Number*.

1958–1969. Reserved for Future Use

C. CHECK WITH INSUFFICIENT FUNDS

1970. Making, Using, etc., Check Knowing Funds Insufficient (Pen. Code, § 476a)

The defendant is charged [in Count _____] with (making[,]/ [or] drawing[,]/ [or] delivering[,]/ [or] using[,]/ [or] attempting to use) (a/an) (check[,]/ [or] draft[,]/ [or] order) knowing that there were insufficient funds for payment of the (check[,]/ [or] draft[,]/ [or] order) [in violation of Penal Code section 476a].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) (a/an) (check[,]/ [or] draft[,]/ [or] order) on a (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) for the payment of money;
2. The defendant acted (for (himself/herself)[,]/ [or] as an agent or representative of someone else[,]/ [or] as an officer of a corporation);
3. When the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ [or] draft[,]/ [or] order), there (were/was) insufficient (funds in/ [or] credit with) the (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) to cover full payment of the (check[,]/ [or] draft[,]/ [or] order) and all other outstanding (checks[,]/ [or] drafts[,]/ [or] orders) on that account;
4. The defendant knew that there (were/was) insufficient (funds/ [or] credit) available in that account;

AND

5. When the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ [or] draft[,]/ [or] order), (he/she) intended to defraud.

(A/An) (*check[,]/ [or] draft[,]/ [or] order*) is a written document directing a (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) to pay the indicated amount to a person named as payee or to someone designated by that person.

A person *makes or draws* (a/an) (check[,]/ [or] draft[,]/ [or] order) when he or she writes it [or causes it to be written] and signs it to authorize payment.

[*Credit*, as used here, is an arrangement or understanding with a (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) for payment of money authorized by (check[,]/ [or] draft[,]/ [or] order).]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[A person (*uses/ [or] attempts to use*) (a/an) (check[,]/ [or] draft[,]/ [or] order) if he or she represents to someone that the instrument is genuine. The representation may be made by words or conduct and may be either direct or indirect.]

[The People allege that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the following items:

_____ <insert description of each instrument when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) at least one of these items and you all agree on which item (he/she) (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use).]

[If you find the defendant guilty of (making[,]/ [or] drawing[,]/ [or] delivering[,]/ [or] using[,]/ [or] attempting to use) (a/an) (check[,]/ [or] draft[,]/ [or] order) knowing that there were insufficient funds for payment of the (check[,]/ [or] draft[,]/ [or] order) you must also determine whether the defendant was previously convicted of _____ <insert at least three theft crimes specified in Penal Code section 476a(b)>.

<Defense: Reasonable Expectation of Payment>

[Even if the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) (a/an) (check[,]/ draft[,]/ [or] order) knowing that there were insufficient funds for payment of the (check[,]/ draft[,]/ [or] order), the defendant did not intend to defraud if, at the time (he/she) acted, (he/she) reasonably and actually believed that the (check[,]/ draft[,]/ [or] order) would be paid by the (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) when presented for payment.

The People have the burden of proving beyond a reasonable doubt that

the defendant intended to defraud. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Defendant Informed Payee About Insufficient Funds>

[If, when the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ draft[,]/ [or] order), (he/she) told the person designated to receive payment on the (check[,]/ draft[,]/ [or] order) that there were insufficient funds to allow the (check[,]/ draft[,]/ [or] order) to be paid, then the defendant is not guilty of this crime.

The People have the burden of proving beyond a reasonable doubt that when the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ draft[,]/ [or] order), (he/she) did not tell the person designated to receive payment that there were insufficient funds to allow the (check[,]/ draft[,]/ [or] order) to be paid. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised August 2015

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant made or used multiple checks, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].)

Give the bracketed paragraph that begins with “The People allege that the defendant,” inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term “utter” as to “use” or “attempt to use” an instrument. The committee has omitted the unfamiliar term “utter” in favor of the more familiar terms “use” and “attempt to use.”

If the prosecution alleges that the defendant made or attempted to use, etc., more than \$950 in checks, give CALCRIM No. 1971, *Making, Using, etc., Check Knowing Funds Insufficient: Total Value of Checks*. If the prosecution alleges that the defendant has a prior forgery-related conviction, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence

shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

Defenses—Instructional Duty

If there is sufficient evidence to raise a reasonable doubt that the defendant expected the check to be paid, the court has a **sua sponte** duty to give the bracketed option headed “Defense: Reasonable Expectation of Payment.” (*People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770].)

If there is sufficient evidence to raise a reasonable doubt that the defendant informed the payee that there were insufficient funds to cash the check, the court has a **sua sponte** duty to give the bracketed option headed “Defense: Defendant Informed Payee About Insufficient Funds.” (*People v. Poyet* (1972) 6 Cal.3d 530, 535–537 [99 Cal.Rptr. 758, 492 P.2d 1150]; *People v. Pugh*, *supra*, 104 Cal.App.4th at p. 73.)

AUTHORITY

- Elements. Pen. Code, § 476a.
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Use or Attempt to Use. *People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770]; *People v. Jackson* (1979) 92 Cal.App.3d 556, 561 [155 Cal.Rptr. 89], overruled on other grounds in *People v. Anderson* (1987) 43 Cal.3d 1104, 1122 [240 Cal.Rptr. 585, 742 P.2d 1306].
- Informed Payee About Insufficient Funds. *People v. Poyet* (1972) 6 Cal.3d 530, 535–537 [99 Cal.Rptr. 758, 492 P.2d 1150]; *People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770].
- Reasonable Expectation of Payment. *People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770].
- Unanimity Instruction If Multiple Documents. *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property §§ 180–187.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143,

Crimes Against Property, § 143.01[1], [3] (Matthew Bender).

LESSER INCLUDED OFFENSES

This offense is a misdemeanor if the total amount of the checks does not exceed \$950, unless the defendant has been previously convicted of three specified theft offenses. (Pen. Code, § 476a(b).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the total amount of the checks exceeds \$950 or if the prior convictions have or have not been proved. If the jury finds that the amount did not exceed \$950 or the prior convictions were not proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Multiple Checks Totaling Over \$950—Number of Counts

Under Penal Code section 476a(b), the offense is a felony-misdemeanor if the total amount of the checks made or issued exceeds \$950. In general, the prosecution may charge a separate count for each check. However, if the individual checks do not meet the statutory amount and the offense is charged as a felony based only on the aggregate value, the prosecution can only charge a single felony count covering all of the checks that total more than \$950. (*In re Watkins* (1966) 64 Cal.2d 866, 868–869 [51 Cal.Rptr. 917, 415 P.2d 805].) If, on the other hand, the defendant is charged with felony offenses based on a prior forgery-related conviction, the prosecution may charge each check as a separate felony count. (*People v. Pettit* (1964) 230 Cal.App.2d 397, 398 [41 Cal.Rptr. 42].)

Grand Theft

A defendant who uses a check with insufficient funds to obtain property may be charged under either Penal Code section 476a or section 487, or both. (*People v. Martin* (1962) 208 Cal.App.2d 867, 876–878 [25 Cal.Rptr. 610].) However, the defendant may not be sentenced on both charges for the same conduct. (*Ibid.*; Pen. Code, § 654.)

Return of Property

Two cases have held that the defendant may present evidence that he or she returned some or all of the property in an effort to demonstrate that he or she did not originally intend to defraud. (*People v. Katzman* (1968) 258 Cal.App.2d 777, 790 [66 Cal.Rptr. 319], disapproved on other grounds in *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 780, fn. 11 [200 Cal.Rptr.916, 677 P.2d 1206]; *People v. Braver* (1964) 229 Cal.App.2d 303, 307–308 [40 Cal.Rptr. 142].) However, other cases have held that, based on the facts of the particular cases, such evidence was not admissible. (*People v. Parker* (1970) 11 Cal.App.3d 500, 510 [89 Cal.Rptr. 815] [evidence of defendant's offer to repay following arrest not relevant]; *People v. Wing* (1973) 32 Cal.App.3d 197, 202 [107 Cal.Rptr. 836] [evidence of restitution not relevant where defendant falsely signed the name of another to a check knowing he had no authority to do so].) If such evidence is presented, the court may give CALCRIM No. 1862, *Return of Property Not a Defense to Theft*. (*People*

v. Katzman, supra, 258 Cal.App.2d at p. 791.) In addition, in *People v. Katzman, supra*, 258 Cal.App.2d at p. 792, the court held that, on request, the defense may be entitled to a pinpoint instruction that evidence of restitution may be relevant to determining if the defendant intended to defraud. If the court concludes that such an instruction is appropriate, the court may add the following to the beginning of CALCRIM No. 1862:

If the defendant returned or offered to return [some or all of] the property obtained, that conduct may show (he/she) did not intend to defraud. If you conclude that the defendant returned or offered to return [some or all of] the property, it is up to you to decide the meaning and importance of that conduct.

**1971. Making, Using, etc., Check Knowing Funds Insufficient:
Total Value of Checks (Pen. Code, § 476a(b))**

If you find the defendant guilty of (making[,]/ [or] drawing[,]/ [or] delivering[,]/ [or] using[,]/ [or] attempting to use) (a/an) (check[,]/ draft[,]/ [or] order) knowing that there were insufficient funds to cover it, you must then decide whether the People have proved either of the following:

1. That at least one (check[,]/ draft[,]/ [or] order) that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) knowing that there were insufficient funds to cover it was for more than \$950;

OR

2. That the total value of the (checks[,]/ [or] drafts[,]/ [or] orders) charged in Count _____ that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) knowing that there were insufficient funds to cover them was more than \$950.

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

New January 2006; Revised August 2015

BENCH NOTES

Instructional Duty

If the defendant is charged with a felony based on the value of the checks, the court has a **sua sponte** duty to instruct on this sentencing factor.

This instruction **must** be given with the appropriate instruction on the other elements of the offense, CALCRIM No. 1970, *Making, Using, etc., Check Knowing Funds Insufficient*.

The court must provide the jury with a verdict form on which the jury will indicate whether the prosecution has or has not been proved that the value of the checks exceeds \$950. (See Penal Code section 476a(b).)

AUTHORITY

- Elements. Pen. Code, § 476a(b).

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property § 180.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[3] (Matthew Bender).

RELATED ISSUES

Multiple Checks Totaling Over \$950—Number of Counts

Under Penal Code section 476a(b), the offense is a felony-misdemeanor if the total amount of the checks made or issued exceeds \$950. In general, the prosecution may charge a separate count for each check. However, if the individual checks do not meet the statutory amount and the offense is charged as a felony based only on the aggregate value, the prosecution can only charge a single felony count covering all of the checks that total more than \$950. (*In re Watkins* (1966) 64 Cal.2d 866, 868–869 [51 Cal.Rptr. 917, 415 P.2d 805].) If, on the other hand, the defendant is charged with felony offenses based on a prior forgery-related conviction, the prosecution may charge each separate check as a separate felony count. (*People v. Pettit* (1964) 230 Cal.App.2d 397, 398 [41 Cal.Rptr. 42].)

1972–1999. Reserved for Future Use

D. INSURANCE FRAUD

2000. Insurance Fraud: Fraudulent Claims (Pen. Code, § 550(a)(1), (4)–(7) & (9))

The defendant is charged [in Count _____] with insurance fraud committed by fraudulent claim [in violation of Penal Code section 550(a)].

To prove that the defendant is guilty of this crime, the People must prove that the defendant knowingly committed the following crime[s] [[or] [aided and abetted] [or] [solicited] [or] [conspired with someone else] to commit (it/them)]:

1.

<Alternative 1A—presented fraudulent claim>

- [1. The defendant (presented/ [or] caused to be presented) a false or fraudulent claim for payment for a loss or injury;]

<Alternative 1B—presented fraudulent claim for vehicle theft or damage>

- [1. The defendant falsely or fraudulently claimed payment for a loss due to (theft[,]/ [or] destruction[,]/ [or] damage[,]/ [or] conversion) of (a motor vehicle[,]/ [or] a motor vehicle part[,]/ [or] contents of a motor vehicle);]

<Alternative 1C—writing to be used for fraudulent claim>

- [1. The defendant (prepared[,]/ [or] made[,]/ [or] signed or subscribed) a document with the intent to (present or use it/ [or] allow it to be presented) to support a false or fraudulent claim;]

<Alternative 1D—made fraudulent claim for health-care benefits>

- [1. The defendant (made/ [or] caused to be made) a false or fraudulent claim for payment of a health-care benefit;]

<Alternative 1E—submitted claim for health-care benefit not used>

- [1. The defendant presented a claim for a health-care benefit that was not used by [or on behalf of] the person named in the claim;]

<Alternative 1F—presented claim for health-care benefit undercharges>

- [1. The defendant claimed payment for undercharges for health-care benefits for a specific person without presenting for

reconciliation, at that same time, any known overcharges for benefits for the same person;]

2. The defendant knew that the claim was false or fraudulent;

AND

3. When the defendant did that act, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

A person *claims, makes, or presents a claim for payment* by requesting payment under a contract of insurance for (a/an) ((loss/ [or] injury)/ health-care benefit).

[A *claim for payment of a health-care benefit* includes a claim submitted by or on behalf of the provider of a workers' compensation health benefit defined in the Labor Code.]

[*Conversion* of property means interfering with someone else's property, without authorization or justification, and depriving the owner of use and possession of the property.]

New January 2006; Revised February 2012, August 2016

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant presented or caused to be presented multiple claims or made multiple documents in support of a fraudulent claim, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Dieguez* (2001) 89 Cal.App.4th 266, 274–275 [107 Cal.Rptr.2d 160].) However, where the evidence shows a “continuous course of conduct,” a unanimity instruction is not required. (*Id.* at p. 275.) If the court concludes that a unanimity instruction is required, give CALCRIM No. 3500, *Unanimity*.

If the prosecution proceeds on a theory of aiding and abetting, soliciting, or conspiracy, give appropriate instructions for those theories.

In element 1, give alternative 1A if the prosecution alleges a violation of Penal

Code section 550(a)(1). Give alternative 1B if the prosecution alleges a violation of Penal Code section 550(a)(4). Give alternative 1C if the prosecution alleges a violation of Penal Code section 550(a)(5). Give alternative 1D if the prosecution alleges a violation of Penal Code section 550(a)(6). Give alternative 1E if the prosecution alleges a violation of Penal Code section 550(a)(7). Give alternative 1F if the prosecution alleges a violation of Penal Code section 550(a)(9).

If a violation of Penal Code section 550(a)(2) or (8) is alleged, give CALCRIM No. 2001, *Insurance Fraud: Multiple Claims*. If a violation of Penal Code section 550(a)(3) is alleged, give CALCRIM No. 2002, *Insurance Fraud: Vehicle Accident*.

If the defendant is charged with a felony violation of Penal Code section 550(a)(6), (7), or (9), give CALCRIM No. 2003, *Insurance Fraud: Health-Care Claims—Total Value*.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone.

Related Instructions

See generally CALCRIM No. 400, *Aiding and Abetting: General Principles* and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

CALCRIM No. 415, *Conspiracy*

CALCRIM No. 441, *Solicitation: Elements*

CALCRIM No. 2001, *Insurance Fraud: Multiple Claims*.

CALCRIM No. 2002, *Insurance Fraud: Vehicle Accident*.

CALCRIM No. 2003, *Insurance Fraud: Health-Care Claims—Total Value*.

AUTHORITY

- Elements. Pen. Code, § 550(a)(1), (4), (5), (6), (7) & (9).
- Intent to Defraud Element of Offense. *People v. Scofield* (1971) 17 Cal.App.3d 1018, 1025–1026 [95 Cal.Rptr. 405]; *People v. Benson* (1962) 206 Cal.App.2d 519, 529 [23 Cal.Rptr. 908], overruled on other grounds in *People v. Perez* (1965) 62 Cal.2d 769, 776, fn. 2 [44 Cal.Rptr. 326, 401 P.2d 934].
- Intent to Defraud—Defined. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.
- Unanimity Instruction. *People v. Dieguez* (2001) 89 Cal.App.4th 266, 274–275 [107 Cal.Rptr.2d 160].

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against

Property, §§ 222, 224.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1][f] (Matthew Bender).

LESSER INCLUDED OFFENSES

Fraudulent claims for health-care benefits, under Penal Code section 550(a)(6) to (9), are misdemeanors if the total amount of the claims does not exceed \$950. (Pen. Code, § 550(c)(2).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the total amount of the claims exceeds \$950. If the jury finds that the amount does not exceed \$950, then the offense should be set at a misdemeanor.

RELATED ISSUES

Writing to Be Used for Fraudulent Claim

Penal Code section 550(a)(5) makes it a felony to “[k]nowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.” “Under this section, the writing required need not be false or fraudulent as long as it is intended to be presented or used in support of any false or fraudulent claim.” (*People v. Zelter* (1955) 135 Cal.App.2d 226, 235 [287 P.2d 183].) In addition, “[i]t need not be shown that defendant himself executed the false instrument if there is proof that he procured its execution or aided and abetted another in doing so.” (*People v. Singh* (1995) 37 Cal.App.4th 1343, 1376 [44 Cal.Rptr.2d 644].)

Liability of Care Provider

A doctor or other care provider who prepares false documents for a fraudulent insurance claim may be prosecuted under Penal Code section 550(a)(1) for “causing the presentation of a fraudulent claim,” even though another person actually presents the claim. (*People v. Singh* (1995) 37 Cal.App.4th 1343, 1369–1370 [44 Cal.Rptr.2d 644].) Alternatively, the care provider may be prosecuted under Penal Code section 550(a)(5), discussed above. (*Ibid.*)

2001. Insurance Fraud: Multiple Claims (Pen. Code, § 550(a)(2) & (8))

The defendant is charged [in Count _____] with submitting multiple insurance claims with intent to defraud [in violation of Penal Code section 550(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant presented two or more claims for (the same (loss/ [or] injury)/payment of the same health-care benefit) to (the same/ [or] more than one) insurer;
2. The defendant knew that (he/she) was submitting two or more claims for the same ((loss/ [or] injury)/health-care benefit);

AND

3. When the defendant presented the claims, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

A person *presents a claim for payment* by demanding payment under a contract of insurance for (a/an) ((loss/ [or] injury)/ health-care benefit).

[A *claim for payment of a health-care benefit* includes a claim submitted by or on behalf of the provider of a workers' compensation health benefit defined in the Labor Code.]

New January 2006; Revised February 2012

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. Use this instruction if a violation of Penal Code section 550(a)(2) or (8) is alleged.

If the defendant is charged with a felony violation of Penal Code section 550(a)(8),

give CALCRIM No. 2003, *Insurance Fraud: Health-Care Claims—Total Value*, with this instruction.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone.

Related Instructions

CALCRIM No. 2000, *Insurance Fraud: Fraudulent Claims*.

CALCRIM No. 2002, *Insurance Fraud: Vehicle Accident*.

CALCRIM No. 2003, *Insurance Fraud: Health-Care Claims—Total Value*.

AUTHORITY

- Elements. Pen. Code, § 550(a)(2) & (8).
- Intent to Defraud Element of Offense. *People v. Scofield* (1971) 17 Cal.App.3d 1018, 1025–1026 [95 Cal.Rptr. 405]; *People v. Benson* (1962) 206 Cal.App.2d 519, 529 [23 Cal.Rptr. 908], overruled on other grounds in *People v. Perez* (1965) 62 Cal.2d 769, 776, fn. 2 [44 Cal.Rptr. 326, 401 P.2d 934].
- Intent to Defraud—Defined. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 185–186.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1][f] (Matthew Bender).

LESSER INCLUDED OFFENSES

Fraudulent claims for health-care benefits, under Penal Code section 550(a)(6) to (9), are misdemeanors if the total amount of the claims does not exceed \$950. (Pen. Code, § 550(c)(2).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the total amount of the claims exceeds \$950. If the jury finds that the amount does not exceed \$950, then the offense should be set at a misdemeanor.

2002. Insurance Fraud: Vehicle Accident (Pen. Code, § 550(a)(3))

The defendant is charged [in Count _____] with insurance fraud in connection with a vehicle accident [in violation of Penal Code section 550(a)(3)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant caused or participated in a vehicle accident;
2. The defendant knew that the purpose of the accident was to present a false or fraudulent insurance claim;

AND

3. When the defendant caused or participated in the accident, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

A person *presents a claim* by demanding payment under a contract of insurance for (a/an) ((loss/ [or] injury)/health-care benefit).

[A person *causes an accident* if the accident is the direct, natural, and probable consequence of the person's action and the accident would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.]

[There may be more than one cause of an accident. An act causes an accident only if it is a substantial factor in causing the accident. A *substantial factor* is more than a trivial or remote factor. However, it need not be the only factor that causes the accident.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. Use this instruction if a violation of Penal Code section 550(a)(3) is alleged.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of the accident, the court should give the “direct, natural, and probable” language in the first bracketed paragraph on causation. If there is evidence of multiple causes of the accident, the court should also give the “substantial factor” instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone.

Related Instructions

CALCRIM No. 2000, *Insurance Fraud: Fraudulent Claims*.

CALCRIM No. 2001, *Insurance Fraud: Multiple Claims*.

CALCRIM No. 2003, *Insurance Fraud: Health-Care Claims—Total Value*.

AUTHORITY

- Elements. Pen. Code, § 550(a)(3).
- Intent to Defraud Element of Offense. *People v. Scofield* (1971) 17 Cal.App.3d 1018, 1025–1026 [95 Cal.Rptr. 405]; *People v. Benson* (1962) 206 Cal.App.2d 519, 529 [23 Cal.Rptr. 908], overruled on other grounds in *People v. Perez* (1965) 62 Cal.2d 769, 776, fn. 2 [44 Cal.Rptr. 326, 401 P.2d 934].
- Intent to Defraud—Defined. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Property, § 185.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 140, *Challenges to Crimes*, § 140.04, Ch. 142, *Crimes Against the Person*, § 142.02[2][c], Ch. 143, *Crimes Against Property*, § 143.01[1][f] (Matthew Bender).

**2003. Insurance Fraud: Health-Care Claims—Total Value (Pen.
Code, § 550(c)(2))**

If you find the defendant guilty of insurance fraud in connection with health-care claims, you must then decide whether the People have proved that the total value of the (claim[s] involved/ [or] amount at issue) was more than \$950 [within a period of 12 consecutive months].

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

New January 2006; Revised February 2012

BENCH NOTES

Instructional Duty

If the defendant is charged with a felony based on the total value of the claims, the court has a **sua sponte** duty to instruct on this element.

This instruction **must** be given with the appropriate instruction on the other elements of the offense, CALCRIM No. 2000, *Insurance Fraud: Fraudulent Claims*, CALCRIM No. 2001, *Insurance Fraud: Multiple Claims*, or CALCRIM No. 2002, *Insurance Fraud: Vehicle Accident*.

The court must provide the jury with a verdict form on which the jury will indicate if the prosecution has or has not proved that the total value of the claims exceeded \$950.

Give the bracketed “within a period of 12 consecutive months” if the facts show several claims filed over a period of time.

AUTHORITY

- Elements. Pen. Code, § 550(c)(2).

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Property, § 186.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.01[1][a], [f], [i] (Matthew Bender).

**2004. Insurance Fraud: Destruction of Insured Property (Pen.
Code, § 548(a))**

The defendant is charged [in Count _____] with (injuring[,]/ [or] destroying[,]/ [or] hiding[,]/ [or] abandoning[,]/ [or] disposing of) insured property with intent to defraud [in violation of Penal Code section 548(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (injured[,]/ [or] destroyed[,]/ [or] hid[,]/ [or] abandoned[,]/ [or] disposed of) property that was insured against loss or damage from (theft[,]/ [or] embezzlement[,]/ [or] any casualty other than fire);

AND

2. When the defendant did that act, (he/she) intended to (defraud/ [or] prejudice) the insurer.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[It does not matter whether the defendant or someone else owned or possessed the property.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone.

Give the bracketed sentence that begins with “It does not matter” if there is

evidence that someone else owned or possessed the property.

For arson, see the Arson series, CALCRIM No. 1500 et seq.

AUTHORITY

- Elements. Pen. Code, § 548(a).
- Intent to Defraud. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 188.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, §§ 143.01[1], 143.11[2] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Destruction or Disposal of Property. Pen. Code, §§ 664, 548; *People v. Splawn* (1985) 165 Cal.App.3d 553, 559 [211 Cal.Rptr. 638].

RELATED ISSUES

Disposes Of

“ ‘[D]isposes of’ in Penal Code section 548 requires a definite change of control [of the property].” (*People v. Splawn* (1985) 165 Cal.App.3d 553, 558 [211 Cal.Rptr. 638].)

2005–2019. Reserved for Future Use

E. FALSE FINANCIAL STATEMENT

2020. False Financial Statement: Making False Statement (Pen. Code, § 532a(1))

The defendant is charged [in Count _____] with (making/ [or] causing to be made) a false written statement about (his/her/another person's/a corporation's) (financial condition[,]/ [or] means[,]/ [or] ability to pay) [in violation of Penal Code section 532a(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—statement made about defendant himself/herself>

- [1. The defendant (made/ [or] caused to be made) a false written statement about (his/her) (financial condition[,]/ [or] means[,]/ [or] ability to pay);]

<Alternative 1B—statement made about someone else or a corporation>

- [1. The defendant (made/ [or] caused to be made) a false written statement about the (financial condition[,]/ [or] means[,]/ [or] ability to pay) of (another person/a firm or corporation (in which the defendant had an interest/ [or] for which the defendant was acting));]
2. The defendant knew that the statement was false;
3. When the defendant (made the statement/ [or] caused the statement to be made), (he/she) intended that the statement be relied on;

AND

4. The defendant (made the statement/ [or] caused the statement to be made) to obtain the (delivery of personal property[,]/ [or] payment of cash[,]/ [or] making of a loan[,]/ [or] extension of credit[,]/ [or] execution of a contract of guaranty or suretyship[,]/ [or] discount of an account receivable[,]/ [or] making, acceptance, discount, sale, or endorsement of a bill of exchange or promissory note) for ((his/her) benefit/the benefit of the (other person/corporation)).

[A person may (make a false statement/ [or] cause a false statement to be made) either directly or indirectly, or through his or her agent. An *agent* is someone authorized by the defendant to act for (him/her) in dealings with third parties.]

[The People allege that the defendant (made/ [or] caused to be made)

the following statements: _____ <insert description of each statement when multiple statements alleged>. **You may not find the defendant guilty unless you all agree that the People have proved that the defendant (made/ [or] caused to be made) at least one of these statements and that the statement was false. You must all agree on which false statement (he/she) (made/ [or] caused to be made).]**

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant made multiple false statements, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752]; *People v. Dieguez* (2001) 89 Cal.App.4th 266, 274–275 [107 Cal.Rptr.2d 160].) However, where the evidence shows a “continuous course of conduct,” a unanimity instruction is not required. (*People v. Dieguez, supra*, 89 Cal.App.4th at p. 275.) If the court concludes that a unanimity instruction is required, give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

If the defendant is charged with a felony violation of Penal Code section 532a(1), give CALCRIM No. 2023, *False Financial Statement: Use of False Identifying Information*.

Give the penultimate bracketed paragraph if there is evidence that the defendant made or caused any statements to be made indirectly or through an agent.

Related Instructions

CALCRIM No. 2021, *False Financial Statement: Obtaining Benefit*.

CALCRIM No. 2022, *False Financial Statement: Reaffirming Statement*.

CALCRIM No. 2023, *False Financial Statement: Use of False Identifying Information*.

AUTHORITY

- Elements. Pen. Code, § 532a(1).
- Agent. Civ. Code, § 2295.
- Unanimity Instruction If Multiple Items. See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752]; *People v. Dieguez* (2001) 89 Cal.App.4th 266, 274–275 [107 Cal.Rptr.2d 160].

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against

Property, § 42.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

A violation of Penal Code section 532a is a misdemeanor unless the defendant used “a fictitious name, social security number, business name, or business address, or . . . falsely represent[ed] himself or herself to be another person or another business.” (Pen. Code, § 532a(4).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if this allegation has or has not been proved. If the jury finds that the allegation has not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Misrepresentation of Identity Insufficient

Penal Code section 532a “require[s] a false statement respecting ‘financial condition, or means or ability to pay.’ ” (*People v. Vincent* (1993) 19 Cal.App.4th 696, 702–703 [23 Cal.Rptr.2d 714].) A statement in which the defendant misrepresents his or her identity or social security number is insufficient. (*Ibid.*)

Application for Credit Does Not Include Apartment Rental

In *People v. Maguire* (1998) 67 Cal.App.4th 1022, 1029–1030 [79 Cal.Rptr.2d 573], the court held that an application to rent an apartment containing false information was not covered by Penal Code section 532a.

**2021. False Financial Statement: Obtaining Benefit (Pen. Code,
§ 532a(2))**

The defendant is charged [in Count _____] with obtaining a benefit using a false written statement about (his/her/another person's/a corporation's) (financial condition[,]/ [or] means[,]/ [or] ability to pay) [in violation of Penal Code section 532a(2)].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—statement made about defendant himself/herself>

- [1. The defendant knew that a false written statement had been made about (his/her) (financial condition[,]/ [or] means[,]/ [or] ability to pay);]

<Alternative 1B—statement made about someone else or a corporation>

- [1. The defendant knew that a false written statement had been made about the (financial condition[,]/ [or] means[,]/ [or] ability to pay) of (another person/a firm or corporation (in which the defendant had an interest/ [or] for which the defendant was acting));]

AND

2. The defendant obtained, for ((his/her) benefit/the benefit of the (other person/corporation)), the (delivery of personal property[,]/ [or] payment of cash[,]/ [or] making of a loan[,]/ [or] extension of credit[,]/ [or] execution of a contract of guaranty or suretyship[,]/ [or] discount of an account receivable[,]/ [or] making, acceptance, discount, sale, or endorsement of a bill of exchange or promissory note) by using the false written statement.

[The People allege that the defendant obtained the following benefits:

_____ *<insert description of each benefit when multiple benefits alleged>*. You may not find the defendant guilty unless you all agree that the People have proved that the defendant obtained at least one of these benefits and you all agree on which benefit (he/she) obtained.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant received multiple benefits, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752]; *People v. Dieguez* (2001) 89 Cal.App.4th 266, 274–275 [107 Cal.Rptr.2d 160].) However, where the evidence shows a “continuous course of conduct,” a unanimity instruction is not required. (*People v. Dieguez*, *supra*, 89 Cal.App.4th at p. 275.) If the court concludes that a unanimity instruction is required, give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

If the defendant is charged with a felony violation of Penal Code section 532a(1), give CALCRIM No. 2023, *False Financial Statement: Use of False Identifying Information*.

Related Instructions

CALCRIM No. 2020, *False Financial Statement: Making False Statement*.

CALCRIM No. 2022, *False Financial Statement: Reaffirming Statement*.

CALCRIM No. 2023, *False Financial Statement: Use of False Identifying Information*.

AUTHORITY

- Elements. Pen. Code, § 532a(2).
- Unanimity Instruction If Multiple Items. See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752]; *People v. Dieguez* (2001) 89 Cal.App.4th 266, 274–275 [107 Cal.Rptr.2d 160].

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Property, § 42.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.01[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

A violation of Penal Code section 532a is a misdemeanor unless the defendant used “a fictitious name, social security number, business name, or business address, or . . . falsely represent[ed] himself or herself to be another person or another business.” (Pen. Code, § 532a(4).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if this allegation has or has not been proved. If the jury finds that the allegation has not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

See the Related Issues section of the Bench Notes to CALCRIM No. 2020, *False*

Financial Statement: Making False Statement.

**2022. False Financial Statement: Reaffirming Statement (Pen.
Code, § 532a(3))**

The defendant is charged [in Count _____] with representing in writing that a false written statement about (his/her/another person's/a corporation's) (financial condition[,]/ [or] means[,]/ [or] ability to pay) was true [in violation of Penal Code section 532a(3)].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—statement made about defendant himself/herself>

- [1. The defendant knew a written statement had been made about (his/her) (financial condition[,]/ [or] means[,]/ [or] ability to pay);]

<Alternative 1B—statement made about someone else or a corporation>

- [1. The defendant knew a written statement had been made about the (financial condition[,]/ [or] means[,]/ [or] ability to pay) of (another person/a firm or corporation (in which the defendant had an interest/ [or] for which the defendant was acting));]
2. After that first written statement had been made, the defendant made a second written statement representing that the contents of the first statement were true at the time of the second statement;
3. The defendant knew that the contents of the first statement were not true at the time (he/she) made the second statement;

AND

4. Based on the second statement, the defendant obtained the (delivery of personal property[,]/ [or] payment of cash[,]/ [or] making of a loan[,]/ [or] extension of credit[,]/ [or] execution of a contract of guaranty or suretyship[,]/ [or] discount of an account receivable[,]/ [or] making, acceptance, discount, sale, or endorsement of a bill of exchange or promissory note) for ((his/ her) benefit/the benefit of the (other person/corporation)).

[The People allege that the defendant represented that the following statements were true: _____ *<insert descriptions when multiple statements alleged>*. You may not find the defendant guilty unless you all agree that the People have proved that the defendant represented that at least one of these statements was true while knowing that the statement was false. You must all agree on which false statement (he/ she) represented to be true.]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant represented as true multiple false statements, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752]; *People v. Dieguez* (2001) 89 Cal.App.4th 266, 274–275 [107 Cal.Rptr.2d 160].) However, where the evidence shows a “continuous course of conduct,” a unanimity instruction is not required. (*People v. Dieguez, supra*, 89 Cal.App.4th at p. 275.) If the court concludes that a unanimity instruction is required, give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

If the defendant is charged with a felony violation of Penal Code section 532a(1), give CALCRIM No. 2023, *False Financial Statement: Use of False Identifying Information*.

Related Instructions

CALCRIM No. 2020, *False Financial Statement: Making False Statement*.

CALCRIM No. 2021, *False Financial Statement: Obtaining Benefit*.

CALCRIM No. 2023, *False Financial Statement: Use of False Identifying Information*.

AUTHORITY

- Elements. Pen. Code, § 532a(3).
- Unanimity Instruction If Multiple Items. See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Property, § 42.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.01[1] (Matthew Bender).

LESSER INCLUDED OFFENSES

A violation of Penal Code section 532a is a misdemeanor unless the defendant used “a fictitious name, social security number, business name, or business address, or . . . falsely represent[ed] himself or herself to be another person or another business.” (Pen. Code, § 532a(4).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the

jury with a verdict form on which the jury will indicate if this allegation has or has not been proved. If the jury finds that the allegation has not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

See the Related Issues section of the Bench Notes to CALCRIM No. 2020, *False Financial Statement: Making False Statement*.

2023. False Financial Statement: Use of False Identifying Information (Pen. Code, § 532a(4))

If you find the defendant guilty of ((making/ [or] causing to be made) a false written statement as charged in Count _____[,]/ [or] obtaining a benefit using a false written statement as charged in Count _____[,]/ [or] representing as true a false written statement as charged in Count _____), you must then decide whether the People have proved that the defendant used false identifying information.

<Alternative A—fictitious information>

[To prove this allegation, the People must prove that the defendant used a fictitious (name[,]/ [or] social security number[,]/ [or] business name[,]/ [or] business address).]

<Alternative B—represented self as someone else>

[To prove this allegation, the People must prove that the defendant falsely (represented that (he/she) was someone else/ [or] claimed that (he/she) represented a business when (he/she) did not).]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

New January 2006

BENCH NOTES

Instructional Duty

If the defendant is charged with a felony based on using false identifying information, the court has a **sua sponte** duty to instruct on this sentencing factor.

This instruction **must** be given with the appropriate instruction on the other elements of the offense, CALCRIM Nos. 2020 to 2022.

The court must provide the jury with a verdict form on which the jury will indicate if the prosecution has or has not been proved that the defendant used false identifying information.

Related Instructions

CALCRIM No. 2020, *False Financial Statement: Making False Statement*.

CALCRIM No. 2021, *False Financial Statement: Obtaining Benefit*.

CALCRIM No. 2022, *False Financial Statement: Reaffirming Statement*.

AUTHORITY

- Elements. Pen. Code, § 532a(4).

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 42.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1] (Matthew Bender).

2024–2039. Reserved for Future Use

F. IDENTITY THEFT

2040. Unauthorized Use of Personal Identifying Information (Pen. Code, § 530.5(a))

The defendant is charged [in Count _____] with the unauthorized use of someone else's personal identifying information [in violation of Penal Code section 530.5(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully obtained someone else's personal identifying information;
2. The defendant willfully used that information for an unlawful purpose;

AND

3. The defendant used the information without the consent of the person whose identifying information (he/she) was using.

Personal identifying information means _____ <insert relevant items from Pen. Code, § 530.55(b)> or an equivalent form of identification.

[As used here, *person* means a human being, whether living or dead, or a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity, or any other legal entity.]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

An *unlawful purpose* includes unlawfully (obtaining/[or] attempting to obtain) (credit[,]/[or] goods[,]/[or] services[,]/[or] real property[,]/ [or] medical information)/ [[or] _____ <insert other unlawful purpose>] without the consent of the other person.

It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.

New January 2006; Revised August 2006, June 2007, August 2009, April 2010, August 2012, August 2013

BENCH NOTES***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In the definition of personal identifying information, give the relevant items based on the evidence presented.

The definition of unlawful purpose is not limited to acquiring information for financial motives, and may include any unlawful purpose for which the defendant may have acquired the personal identifying information, such as using the information to facilitate violation of a restraining order. (*See, e.g., People v. Tillotson* (2007) 157 Cal.App.4th 517, 533 [69 Cal.Rptr.3d 42].)

AUTHORITY

- Elements. Pen. Code, § 530.5(a).
- Personal Identifying Information Defined. Pen. Code, § 530.55(b).
- Person Defined. Pen. Code, § 530.55(a).
- No Personation Requirement. *People v. Barba* (2012) 211 Cal.App.4th 214, 223–224 [149 Cal.Rptr.3d 371].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 210, 212.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1], [4][h] (Matthew Bender).

**2041. Fraudulent Possession of Personal Identifying Information
(Pen. Code, § 530.5(c)(1), (2), or (3))**

The defendant is charged [in Count _____] with the fraudulent possession of personal identifying information [with a prior conviction for the same offense][in violation of Penal Code section 530.5(c)((1)/(2)/(3))].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant acquired or kept the personal identifying information of (another person/ten or more other persons);

[AND]

2. The defendant did so with the intent to defraud another person(;/.)

<Give paragraph 3 if defendant is charged with having a prior conviction and has not stipulated to that conviction.>

[AND]

3. The defendant has a prior conviction for _____ *<insert prior conviction suffered pursuant to Penal Code section 530.5>.*

A person intends to *defraud* if he or she intends to deceive another person in order to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to a legal, financial, or property right.

Personal identifying information means _____ *<insert relevant items from Pen. Code, § 530.55(b)>* or an equivalent form of identification.

[As used here, *person* means a human being, whether living or dead, or a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity or any other legal entity.]

It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.

New August 2009; Revised April 2010

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “As used here” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

In the definition of personal identifying information, give the relevant items based on the evidence presented.

AUTHORITY

- Elements. Pen. Code, § 530.5(c).
- Personal Identifying Information Defined. Pen. Code, § 530.55(b).
- Person Defined. Pen. Code, § 530.55(a).
- Intent to Defraud—Defined. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (2008 Supp.) Crimes Against Property, § 209A.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01 (Matthew Bender).

**2042. Fraudulent Sale, Transfer or Conveyance of Personal
Identifying Information (Pen. Code, § 530.5(d)(1))**

The defendant is charged [in Count _____] with the fraudulent (sale/ [or] transfer/ [or] conveyance) of personal identifying information [in violation of Penal Code section 530.5(d)(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (sold/ [or] transferred/ [or] conveyed) the personal identifying information of another person;

AND

2. The defendant did so with the intent to defraud.

A person intends to *defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to a legal, financial, or property right.

Personal identifying information means _____ <insert relevant items from Pen. Code, § 530.55(b)> or an equivalent form of identification.

[As used here, *person* means a human being, whether living or dead, or a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity or any other legal entity.]

It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.

New August 2009; Revised April 2010

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “As used here” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

In the definition of personal identifying information, give the relevant items based on the evidence presented.

AUTHORITY

- Elements. Pen. Code, § 530.5(d).

- Personal Identifying Information Defined. Pen. Code, § 530.55(b).
- Person Defined. Pen. Code, § 530.55(a).
- Intent to Defraud—Defined. *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. Pen. Code, § 8.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (2008 Supp.) Crimes Against Property, § 209A.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01 (Matthew Bender).

**2043. Knowing Sale, Transfer, or Conveyance of Personal
Identifying Information to Facilitate Its Unauthorized Use (Pen.
Code, § 530.5(d)(2))**

The defendant is charged [in Count _____] with the knowing (sale/ [or] transfer [or] conveyance) of personal identifying information [in violation of Penal Code section 530.5(d)(2)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (sold/ [or] transferred/ [or] conveyed) the personal identifying information of (a specific person/ _____ <insert name of victim>);

AND

2. When the defendant did so, (he/she) knew that the personal identifying information would be used to obtain or attempt to obtain (credit/ [or] goods/ [or] services/ [or] real property/ [or] medical information) [[or] _____ <insert other unlawful purpose>] without the consent of that specific person.

Personal identifying information means _____ <insert relevant items from Pen. Code, § 530.55(b)> or an equivalent form of identification.

[As used here, *person* means a human being, whether living or dead, or a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity or any other legal entity.]

New August 2009; Revised April 2010

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “As used here” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

In the definition of personal identifying information, give the relevant items based on the evidence presented.

The definition of unlawful purpose is not limited to acquiring information for financial motives, and may include any unlawful purpose for which the defendant

may have acquired the personal identifying information, such as using the information to facilitate violation of a restraining order. (*See, e.g., People v. Tillotson* (2007) 157 Cal.App.4th 517, 533 [69 Cal.Rptr.3d 42].)

AUTHORITY

- Elements. Pen. Code, § 530.5(d)(2).
- Personal Identifying Information Defined. Pen. Code, § 530.55(b).
- Person Defined. Pen. Code, § 530.55(a).

Secondary Sources

2 Witkin & Epstein, California Criminal Law (2008 Supp.) Crimes Against Property, § 209A.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01 (Matthew Bender).

2044. False Personation (Pen. Code, §§ 529(a), 530)

The defendant is charged [in Count _____] with falsely impersonating another person in that person's private or official capacity and performing certain acts [in violation of Penal Code section (529(a)/530)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant falsely impersonated another person in the other person's private or official capacity;

AND

<Use the following paragraphs for violations of Penal Code section 529(a)>

2. While falsely impersonating that person, the defendant:

[2A. Posted bail or acted as surety for anyone in any proceeding, before any judge or officer authorized to take that bail or surety(;/.)][or]

[2B. Verified, published, acknowledged, or proved, in the name of that person, any written document;

AND

[2C. When the defendant did so, (he/she) intended that the written document be recorded, delivered, or used as though it were an authentic document(./;)][or]

[2D. Did anything that, if done by the person being falsely impersonated, might cause (that person to be liable in a lawsuit or criminal prosecution/ [or] that person to pay any amount of money/ [or] that person to be subject to any charge, forfeiture, or penalty/ [or] the defendant or anyone else to receive a benefit as a result).

<Use the following paragraphs for violations of Penal Code section 530>

[2E. Received money or property;

2F. The defendant knew that the money or property was intended to be delivered to the person that (he/she) was falsely impersonating;

2G. The money or property was worth (more than \$950/\$950 or less);

2H. When the defendant acted, (he/she) intended to deprive the true

owner of the money or property, or use it for (his/her) own benefit, or let someone else use it.]

New February 2015

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

AUTHORITY

- Elements. Pen. Code, §§ 529(a), 530.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 202

1 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 10, *Investigative Detention*, § 10.05[2] (Matthew Bender)

RELATED ISSUES

Penal Code section 529(a)(3) does not require any specific mental state beyond intentionally falsely impersonating another. *People v. Rathert* (2000) 24 Cal.4th 200, 205–206 [99 Cal.Rptr.2d 779, 6 P.3d 700].

LESSER INCLUDED OFFENSES

- A violation of Penal Code section 529(b) is a lesser included offense of section 529(a).

2045–2099. Reserved for Future Use